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\_\_\_\_\_ BILL NO. \_\_\_\_\_  
INTRODUCED BY \_\_\_\_\_

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE OFFICE OF THE CORRECTIONS  
OMBUDSMAN; PROVIDING FOR THE APPOINTMENT AND REQUIREMENTS OF THE CORRECTIONS  
OMBUDSMAN; DESCRIBING THE POWERS AND DUTIES OF THE CORRECTIONS OMBUDSMAN;  
DESCRIBING THE INVESTIGATIVE AND INSPECTION PROCEDURES OF THE CORRECTIONS  
OMBUDSMAN; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING CONFIDENTIALITY;  
PROHIBITING RETALIATION; CREATING THE CORRECTIONS OMBUDSMAN ADVISORY BOARD AND  
ESTABLISHING ITS PURPOSE AND DUTIES; PROVIDING DEFINITIONS; PROVIDING AN  
APPROPRIATION; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Office of corrections ombudsman established.** (1) There is an office  
of the corrections ombudsman directed by the corrections ombudsman.

(2) The governor shall appoint a corrections ombudsman from the list of candidates provided by  
the corrections ombudsman advisory board pursuant to [section 2] who is:

(a) a resident of this state; and

(b) qualified by training and experience to perform the duties of the corrections ombudsman.

(3) The office is allocated to the department of administration for administrative purposes only as  
prescribed in 2-15-121. However, the office may hire its own personnel and 2-15-121(2)(d) does not apply.

**NEW SECTION. Section 2. Corrections ombudsman advisory board -- duties -- membership.** (1)  
There is a corrections ombudsman advisory board. The board is attached to the department of administration  
for administrative purposes only as prescribed in 2-15-121.

1 (2) Except as provided in subsection (5), each member must be appointed for a term of 2 years.

2 The board consists of 14 members appointed as follows:

3 (a) 10 members appointed by the governor to include:

4 (i) two persons formerly incarcerated under the jurisdiction of the department of corrections;

5 (ii) two family members of inmates currently incarcerated under the jurisdiction of the department  
6 of corrections;

7 (iii) a county attorney;

8 (iv) a public defender;

9 (v) an individual with a background in health care and social work;

10 (vi) an individual with a background in mental health care and substance use disorder treatment;

11 (vii) one representative of crime victims; and

12 (viii) an individual with experience managing a government agency;

13 (b) two members of the house of representatives, one selected by the speaker of the house and  
14 one selected by the house minority leader; and

15 (c) two members of the senate, one selected by the president of the senate and one selected by  
16 the senate minority leader.

17 (3) Members of this board may not be current employees or contractors of the department of  
18 corrections or have a family member who is a current employee or contractor of the department of corrections.

19 (4) The board shall elect two co-presiding officers from its members.

20 (5) To allow for staggered membership appointments, the initial terms of seven members must be  
21 appointed to serve a term of 1 year.

22 (6) (a) A vacancy on the board must be filled in the manner of the original appointment. If a  
23 vacancy on the board remains unfilled by the appropriate appointing authority for more than 60 days, the board  
24 may vote to appoint a member to serve on the board until the appropriate appointing authority makes an  
25 appointment.

26 (b) A member may only be removed for cause. If a vacancy occurs, a member must be appointed  
27 to fill the unexpired term by the authority that appointed the vacating member.

28 (7) Board members shall serve without compensation but may be reimbursed as provided in 2-18-

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1 501 through 2-18-503 for expenses incurred in the performance of their duties.

2 (8) The board shall meet twice a year to carry out its duties or:

3 (a) whenever there is a vacancy in the corrections ombudsman position;

4 (b) as the co-presiding officers consider necessary; or

5 (c) on the call of the majority of the members.

6 (9) The board's duties are to:

7 (a) submit a list of candidates for the position of corrections ombudsman for the governor's

8 consideration, pursuant to [section 1];

9 (b) provide guidance and advice to the corrections ombudsman regarding facility conditions and  
10 humane treatment; and

11 (c) convene public hearings twice a year to present, review, and discuss the corrections  
12 ombudsman's services, findings, and recommendations.

13  
14 **NEW SECTION. Section 3. Definitions.** For the purposes of this part, the following definitions apply:

15 (1) "Administrative act" means a department action, omission, decision, rule, interpretation,  
16 recommendation, policy, practice, or procedure relating to corrections services.

17 (2) "Board" means the corrections ombudsman advisory board established in [section 2].

18 (3) "Complainant" means an inmate, a family member of an inmate, an interested citizen,  
19 department employees, a legislator or other public official, or a government agency who files a request for  
20 assistance with the office.

21 (4) "Corrections ombudsman" means the person appointed by the governor as provided in [section  
22 1] to administer the provisions of this part.

23 (5) "Corrections services" means services provided by the department under federal and state law.

24 (6) "Department" means the department of corrections established in 2-15-2301.

25 (7) "Facility" means a state prison as defined in 53-30-101.

26 (8) "Family member" means a grandparent, parent, sibling, spouse or domestic partner, child,  
27 aunt, uncle, cousin, niece, nephew, grandchild, or any other person related to an individual by blood, adoption,  
28 marriage, or a fostering relationship.

(9) "Inmate" means a person committed to or under the jurisdiction of the department and is confined in a facility.

(10) "Inspection" means the examination of premises, equipment, or procedures by the corrections ombudsman to determine whether a facility's corrections services are being conducted in a manner consistent with the custody, assessment, care, supervision, treatment, education, and rehabilitation of inmates.

(11) "Office" means the office of the corrections ombudsman.

(12) "Request for assistance" means a request by a complainant asking the corrections ombudsman for assistance in protecting the rights or interests of an inmate. Interests of an inmate may include but are not limited to an inmate's health, safety, well-being, and rehabilitation.

**NEW SECTION. Section 4. Corrections ombudsman appointment -- vacancy in office -- term.**

(1) (a) No later than 90 days after [the effective date of this act], or no later than 60 days after any vacancy in the position of corrections ombudsman, the board shall solicit applications for the position of corrections ombudsman and meet to consider and interview the most qualified candidates. A candidate:

(i) must be a resident of this state;

(ii) must be qualified by training and experience to perform the duties of the corrections ombudsman; and

(iii) may not be a current or former employee or contractor of the department or have a family member who is a current employee or contractor of the department.

(b) The board shall:

(i) select no more than five candidates;

(ii) publish the names of the selected candidates on the office's website; and

(iii) hold a public hearing allowing testimony from members of the public concerning the selected candidates.

(c) The board shall submit to the governor a list of selected candidates. The list must rank the candidates in the order of board preference.

(2) (a) No later than 30 days after receiving the list submitted by the board under subsection (1), the governor shall appoint a person to the position of corrections ombudsman.

(b) If at any time a candidate withdraws from consideration prior to appointment, the appointment must be made from the remaining candidates on the list submitted by the board to the governor.

(3) If the governor fails to appoint a candidate within 30 days after receiving the list, the candidate ranked first must receive the appointment.

(4) The person appointed as corrections ombudsman holds the office for a term of 4 years and continues to hold the office until reappointed or until a successor is appointed. The governor may only remove the corrections ombudsman for neglect of duty, misconduct, or the inability to perform regular duties. A vacancy must be filled using the process as described in this section for the remainder of the term.

**NEW SECTION. Section 5. Powers and duties -- reporting requirement.** (1) The corrections ombudsman shall:

(a) establish priorities for use of the resources available to the corrections ombudsman;

(b) maintain a statewide telephone number, website, and mailing address for the receipt of requests for assistance and inquiries;

(c) provide information as appropriate to inmates, family members of inmates, department employees, and others regarding the rights of inmates;

(d) establish procedures to receive, investigate, and resolve requests for assistance;

(e) respond to requests for assistance regarding administrative acts or unresolved grievances and investigate the circumstances surrounding and related to the requests;

(f) periodically review department administrative acts and promote best practices and effective programs by working in consultation with the board to improve procedures, practices, and programs;

(g) undertake, participate in, and consult with the department in activities;

(h) inspect department facilities and monitor compliance with applicable federal and state laws related to the health, safety, well-being, and rehabilitation of inmates;

(i) monitor and participate in policy developments affecting correctional facilities;

(j) establish a statewide uniform reporting system to collect and analyze data related to requests for assistance received by the corrections ombudsman or through inspections conducted by the corrections ombudsman;

- 1 (k) establish a public-facing data dashboard reporting critical incident data received by the  
2 corrections ombudsman through investigations or inspections or from the department, including but not limited  
3 to:
- 4 (i) deaths, suicides, and suicide attempts in custody;
  - 5 (ii) physical and sexual assaults;
  - 6 (iii) the number of staff vacancies at each facility;
  - 7 (iv) the inmate-to-staff ratios at each facility;
  - 8 (v) staff tenure, turnover, and compensation;
  - 9 (vi) the number of in-person visits to inmates that were made and denied at each facility; and
  - 10 (vii) the number of inmate complaints or grievances submitted to the department, the resolution of  
11 the complaints or grievances, and how long it took to resolve each complaint or grievance; and
- 12 (l) establish procedures to gather stakeholder input into the office's activities and priorities that  
13 must include a 30-day period for receipt of and response to public comment.

14 (2) For the purposes of carrying out the duties of the corrections ombudsman, the corrections  
15 ombudsman may:

- 16 (a) hire staff, contractors, and unpaid volunteers and secure office space, equipment, and other  
17 necessary services. Under the supervision of the corrections ombudsman, any employee, contractor, or unpaid  
18 volunteer hired or retained by the office has the same authority and powers of the corrections ombudsman.
- 19 (b) contract with experts as needed to assist in the monitoring and inspection of facilities, the  
20 assessment of data, and the review, investigation, or resolution of requests for assistance; and
- 21 (c) with or without prior notice, access facilities, programs, and services for inmates at any time.
- 22 The corrections ombudsman shall adopt procedures to ensure that unannounced inspections are conducted in  
23 a reasonable manner. Access for inspections includes:
- 24 (i) viewing, photographing, and video recording all areas of the facility;
  - 25 (ii) inspecting and copying all relevant information, data, records, or documents in the possession  
26 or control of the department that the corrections ombudsman considers necessary in an investigation of a  
27 request for assistance; and
  - 28 (iii) meeting, interviewing, and communicating privately and confidentially with facility staff and

1 inmates, both formally and informally, by telephone, mail, electronic communication, and in person for the  
2 purposes of an investigation. These communications may not be monitored by, recorded by, or conducted in  
3 the presence of department employees, contractors, or unpaid volunteers.

4 (3) (a) Facility and other department employees are required to cooperate fully and promptly with  
5 the corrections ombudsman.

6 (b) The corrections ombudsman shall immediately report to the governor and the legislature if the  
7 department:

8 (i) fails to grant access to a facility or to an individual;

9 (ii) fails to provide requested information or data; or

10 (iii) impedes the work of the corrections ombudsman.

11 (4) In accordance with 5-11-210, the corrections ombudsman shall report annually to the governor,  
12 the legislature, the corrections ombudsman advisory board, and the law and justice interim committee. The  
13 report must be public and must contain:

14 (a) a summary of the corrections ombudsman's inspections and request for assistance

15 investigations conducted and the number of facilities visited in that calendar year, including the corrections  
16 ombudsman's findings and recommendations, aggregated and disaggregated by facility, and the department's  
17 responses and any actions taken by the department to resolve or correct any problems identified as a result of  
18 the findings, conclusions, and recommendations of the corrections ombudsman;

19 (b) any instance in which the department is unable to implement or disagrees with a  
20 recommendation or conclusion of the corrections ombudsman or any problems that have not been resolved or  
21 corrected by the department, as well as the department's written explanation detailing why it is unable to  
22 implement or disagrees with the corrections ombudsman's findings, conclusions, and recommendations; and

23 (c) recommendations including but not limited to the following:

24 (i) how the office and the department are funded and staffed;

25 (ii) improving staff retention, training, working conditions, compensation, benefits, morale, and  
26 safety;

27 (iii) improving conditions of confinement, the treatment of inmates, and the services available to  
28 inmates, including medical care;

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- 1 (iv) improving visitation and communication with family members, including methods of  
2 communication;
- 3 (v) improving administrative segregation or solitary confinement procedures;
- 4 (vi) improving request for assistance investigation and resolution;
- 5 (vii) improving access to and quality and availability of educational and rehabilitative programming,  
6 drug and mental health treatment, and inmate vocational training;
- 7 (viii) improving transparency about conditions in the facilities and the department overall; and
- 8 (ix) preventing future violations of incarcerated people's rights as protected under state and federal  
9 law and promoting the health, safety, well-being, and rehabilitation of inmates.
- 10

11 **NEW SECTION. Section 6. Investigations -- procedure -- access to facilities and records.** (1) (a)

12 Except as provided in subsection (1)(b), a complainant may submit a request for assistance to the corrections  
13 ombudsman only after exhausting the department's grievance process.

14 (b) The corrections ombudsman may accept complaints prior to exhausting the department's  
15 grievance process in the interest of justice or to prevent imminent harm.

16 (2) The corrections ombudsman may not investigate a request for assistance if:

17 (a) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;

18 (b) the request for assistance is too delayed to justify an investigation;

19 (c) the person requesting assistance is not personally aggrieved by the subject matter of the  
20 request; or

21 (d) the request for assistance has been previously investigated by the corrections ombudsman.

22 (3) The corrections ombudsman may not investigate a request for assistance related to an  
23 inmate's underlying criminal conviction.

24 (4) The corrections ombudsman may refer the complainant and others to appropriate resources or  
25 state, tribal, or federal agencies.

26 (5) The corrections ombudsman may investigate a request for assistance in a matter that is being  
27 or may reasonably be addressed by another remedy or channel, including a matter that is before a court.

28 (6) The corrections ombudsman may not impose any fee for the submission or investigation of

1 requests for assistance.

2 (7) The corrections ombudsman shall remain neutral and impartial and may not act as an advocate  
3 for the complainant or for the department.

4 (8) (a) After an investigation is completed, the corrections ombudsman shall provide the  
5 department with any findings, conclusions, and recommendations.

6 (b) The department shall inform the corrections ombudsman no later than 60 days after receipt of  
7 the corrections ombudsman's findings, conclusions, and recommendations on the actions the department is  
8 taking to resolve or correct any problems identified by the corrections ombudsman. If the department has not  
9 resolved or corrected a problem, the department shall inform the corrections ombudsman of any reasons for not  
10 addressing the corrections ombudsman's findings, conclusions, and recommendations.

11 (9) (a) Following notification from the corrections ombudsman with a written request for access to  
12 department records and related data, the designated department staff shall provide the corrections ombudsman  
13 with access to the requested documentation and related data not later than 20 days after the corrections  
14 ombudsman's written request for the records.

15 (b) If the records requested by the corrections ombudsman pertain to an inmate's death, threats of  
16 bodily harm, including but not limited to sexual or physical assaults, or the denial of necessary medical  
17 treatment, the records must be provided within 5 days unless the corrections ombudsman consents to an  
18 extension of that timeframe.

19 (10) The corrections ombudsman shall work with the department to minimize disruption to the  
20 operations of the department due to corrections ombudsman activities and shall comply with the department's  
21 security clearance processes, provided these processes do not impede the activities outlined in this part.

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23 **NEW SECTION. Section 7. Retaliation prohibited.** (1) It is an unlawful discriminatory practice for a  
24 state or local government agency to discharge, expel, blacklist, or otherwise discriminate against an individual  
25 because the individual has filed a request for assistance, testified, assisted, or participated in any manner in an  
26 investigation or proceeding under this part.

27 (2) Any discharge, expulsion, blacklisting, or other discrimination against a complainant may be  
28 considered by the corrections ombudsman as an appropriate subject of an investigation.

(3) An individual who believes they were discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after the violation occurs, file a complaint as provided in 30-10-1105.

(4) This section is not intended to infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

**NEW SECTION. Section 8. Federal claims.** A request for assistance or lack of request for assistance to the office or any action or lack of action by the office on a request for assistance made pursuant to this part may not be considered an administrative procedure required for exhaustion of remedies prior to bringing an action pursuant to the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e, et seq.

**NEW SECTION. Section 9. Legislator access to corrections ombudsman records.** (1) Records of corrections ombudsman investigations, including case notes, correspondence, and interviews, must be disclosed to a member of the legislature if:

(a) the legislator receives a written request from a person who has requested assistance from the corrections ombudsman about whether laws protecting the rights of inmates are being complied with or whether the laws need to be changed to enhance protections for the rights of inmates;

(b) the legislator submits a written request to the corrections ombudsman asking to review the records relating to the written inquiry. The legislator's request must include a copy of the written inquiry, the name of the inmate whose records are to be reviewed, and any other information that will assist the corrections ombudsman in locating the records.

(c) before reviewing the records, the legislator:

(i) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(ii) receives from the corrections ombudsman an orientation of the content and structure of the records.

(2) (a) Except as provided in subsection (2)(b), records disclosed pursuant to this section are confidential. Records must be made available for the legislator to view but may not be copied, photographed, or